

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

1 Reuben Yeroushalmi (SBN 193981)
 reuben@yeroushalmi.com
 2 Peter T. Sato (SBN 238486)
 peter@yeroushalmi.com
 3 **YEROUSHALMI & YEROUSHALMI***
 An Association of Independent Law Corporations
 4 9100 Wilshire Boulevard, Suite 240W
 Beverly Hills, California 90212
 5 Telephone: (310) 623-1926
 6 Facsimile: (310) 623-1930
 7 Attorneys for Plaintiff,
 8 CONSUMER ADVOCACY GROUP, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
 11

12 CONSUMER ADVOCACY GROUP, INC.,
 13 in the public interest,

14 Plaintiff,

15 v.

16
 17 MACY’S, INC., a Delaware corporation;
 18 MACY’S BACKSTAGE, INC., an Ohio
 corporation;
 19 and DOES 1-10,

20 Defendants.

CASE NO. **19STCV38857**

COMPLAINT FOR PENALTY AND
 INJUNCTION

Violation of Proposition 65, the Safe
 Drinking Water and Toxic Enforcement
 Act of 1986 (*Health & Safety Code, §*
25249.5, et seq.)

ACTION IS AN UNLIMITED CIVIL
 CASE (exceeds \$25,000)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
2 defendants MACY'S, INC., MACY'S BACKSTAGE, INC., and DOES 1-10 as follows:

3 **THE PARTIES**

- 4 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
5 organization qualified to do business in the State of California. CAG is a person within
6 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
7 as a private attorney general, brings this action in the public interest as defined under
8 Health and Safety Code Section 25249.7, subdivision (d).
- 9 2. Defendant MACY'S, INC. ("MACY'S") is a Delaware corporation doing business in the
10 State of California at all relevant times herein.
- 11 3. Defendant MACY'S BACKSTAGE, INC. ("BACKSTAGE") is an Ohio corporation,
12 doing business in the State of California at all relevant times herein.
- 13 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10,
14 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
15 Complaint to allege their true names and capacities when ascertained. Plaintiff is
16 informed, believes, and thereon alleges that each fictitiously named defendant is
17 responsible in some manner for the occurrences herein alleged and the damages caused
18 thereby.
- 19 5. At all times mentioned herein, the term "Defendants" includes MACY'S, BACKSTAGE,
20 and DOES 1-10.
- 21 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
22 times mentioned herein have conducted business within the State of California.
- 23 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
24 including DOES 1-10, was an agent, servant, or employee of each of the other
25 Defendants. In conducting the activities alleged in this Complaint, each of the
26 Defendants was acting within the course and scope of this agency, service, or
27 employment, and was acting with the consent, permission, and authorization of each of

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint
2 were ratified and approved by every other Defendant or their officers or managing agents.
3 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
4 wrongful conduct of each of the other Defendants.

- 5 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
6 Defendants was a person doing business within the meaning of Health and Safety Code
7 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
8 employees at all relevant times.

9 **JURISDICTION**

- 10 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
12 those given by statute to other trial courts. This Court has jurisdiction over this action
13 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 10. This Court has jurisdiction over Defendants named herein because Defendants either
16 reside or are located in this State or are foreign corporations authorized to do business in
17 California, are registered with the California Secretary of State, or who do sufficient
18 business in California, have sufficient minimum contacts with California, or otherwise
19 intentionally avail themselves of the markets within California through their manufacture,
20 distribution, promotion, marketing, or sale of their products within California to render
21 the exercise of jurisdiction by the California courts permissible under traditional notions
22 of fair play and substantial justice.
- 23 11. Venue is proper in the County of Los Angeles because one or more of the instances of
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
25 because Defendants conducted, and continue to conduct, business in the County of Los
26 Angeles with respect to the consumer product that is the subject of this action.

1 **BACKGROUND AND PRELIMINARY FACTS**

2 12. In 1986, California voters approved an initiative to address growing concerns about
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
8 from contamination, to allow consumers to make informed choices about the products
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see
10 fit.

11 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
12 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
13 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
14 chemicals and chemical families. Proposition 65 imposes warning requirements and
15 other controls that apply to Proposition 65-listed chemicals.

16 14. All businesses with ten (10) or more employees that operate or sell products in California
17 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
18 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
19 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
20 reasonable” warnings before exposing a person, knowingly and intentionally, to a
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

22 15. Proposition 65 provides that any person “violating or threatening to violate” the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
24 “Threaten to violate” means “to create a condition in which there is a substantial
25 probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 16. Plaintiff identified certain practices of manufacturers and distributors of Plastic Cases
2 containing Electronic Accessories of exposing, knowingly and intentionally, persons in
3 California to Bis(2-ethylhexyl)phthalate ("DEHP") of such products without first
4 providing clear and reasonable warnings of such to the exposed persons prior to the time
5 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

6 17. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
7 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
8 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
9 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP
10 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

11 18. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
12 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*
13 *Regs.* tit. 27, § 27001(c)). DEHP is known to the State to cause developmental, and male
14 reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and
15 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to
16 the State to cause reproductive toxicity DEHP became fully subject to Proposition 65
17 warning requirements and discharge prohibitions.

18 **SATISFACTION OF PRIOR NOTICE**

19 19. On or about April 11, 2019, Plaintiff gave notice of alleged violations of Health and
20 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
21 private action to MACY'S, BACKSTAGE, and to the California Attorney General,
22 County District Attorneys, and City Attorneys for each city containing a population of at
23 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
24 the product Plastic Cases containing Electronic Accessories.

25 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer
26 products involved, the likelihood that such products would cause users to suffer
27 significant exposures to DEHP, and the corporate structure of each of the Defendants.

1 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
2 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
3 Plaintiff who executed the certificate had consulted with at least one person with relevant
4 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
5 subject Proposition 65-listed chemical of this action. Based on that information, the
6 attorney for Plaintiff who executed the Certificate of Merit believed there was a
7 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
8 to the Certificate of Merit served on the Attorney General the confidential factual
9 information sufficient to establish the basis of the Certificate of Merit.

10 22. Plaintiff's notice of alleged violations also included a Certificate of Service and a
11 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
12 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

13 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
14 gave notice of the alleged violations to MACY'S, BACKSTAGE, and the public
15 prosecutors referenced in Paragraph 19.

16 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
17 any applicable district attorney or city attorney has commenced and is diligently
18 prosecuting an action against the Defendants.

19 **FIRST CAUSE OF ACTION**

20 **(By CONSUMER ADVOCACY GROUP, INC. and against MACY'S, BACKSTAGE, and**
21 **DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
22 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

23 **Plastic Case**

24 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this Complaint
25 as though fully set forth herein.

26 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
27 distributor, promoter, or retailer of Plastic Cases containing Electronic Accessories.
28 ("Plastic Cases"), including but not limited to "Rose Gold Metallic Case containing

1 "Phone/Tablet Stand, Wall Charger,Pouch,3-in-1 Charger, Aux Earbuds"; Tech Must
2 Haves";"UPC"842100 109364";"CY-1376";"Designed in the USA, Made in China"

3 27. Plastic Case contains DEHP.

4 28. Defendants knew or should have known that DEHP has been identified by the State of
5 California as a chemical known to cause cancer and reproductive toxicity and therefore
6 was subject to Proposition 65 warning requirements. Defendants were also informed of
7 the presence of DEHP in Plastic Case within Plaintiff's notice of alleged violations
8 further discussed above at Paragraph 19.

9 29. Plaintiff's allegations regarding Plastic Case concerns "[c]onsumer products
10 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
11 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
12 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
13 *25602(b)*. Plastic Case are consumer products, and, as mentioned herein, exposures to
14 DEHP took place as a result of such normal and foreseeable consumption and use.

15 30. Plaintiff is informed, believes, and thereon alleges that between April 11, 2016 and the
16 present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Plastic Cases, which Defendants manufactured, distributed, or
18 sold as mentioned above, to DEHP, without first providing any type of clear and
19 reasonable warning of such to the exposed persons before the time of exposure.
20 Defendants have distributed and sold Plastic Case in California. Defendants know and
21 intend that California consumers will use Plastic Cases, thereby exposing them to DEHP.
22 Defendants thereby violated Proposition 65.

23 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
24 Persons sustain exposures by handling or carrying Plastic Case without wearing gloves or
25 any other personal protective equipment, or by touching bare skin or mucous membranes
26 with gloves after handling Plastic Case. as well as through direct and indirect hand to
27 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed

1 from Plastic Case.

2 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
3 Proposition 65 as to Plastic Cases have been ongoing and continuous, as Defendants
4 engaged and continue to engage in conduct which violates Health and Safety Code
5 Section 25249.6, including the manufacture, distribution, promotion, and sale of Plastic
6 Case, so that a separate and distinct violation of Proposition 65 occurred each and every
7 time a person was exposed to DEHP by Plastic Cases as mentioned herein.

8 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
9 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
10 violations alleged herein will continue to occur into the future.

11 34. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to DEHP from Plastic Case, pursuant to Health
13 and Safety Code Section 25249.7(b).

14 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
15 filing this Complaint.

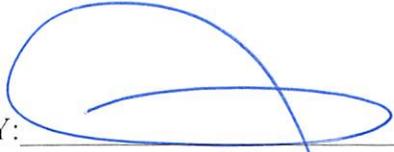
16 **PRAYER FOR RELIEF**

17 Plaintiff demands against each of the Defendants as follows:

- 18 1. A permanent injunction mandating Proposition 65-compliant warnings;
19 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
20 3. Costs of suit;
21 4. Reasonable attorney fees and costs; and
22 5. Any further relief that the court may deem just and equitable.

23 Dated: October 29, 2019

YEROUSHALMI & YEROUSHALMI

24
25
26 BY: 

Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.